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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOSHUA WAYNE MARTINEZ, Defendant and Appellant.	E071781 (Super.Ct.No. FWV18002359) OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid A. Uhler, Judge. Affirmed with directions.

Eric E. Reynolds, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sedival and Elizabeth M. Kuchar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Joshua Wayne Martinez was convicted of taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)) and receipt of a stolen vehicle (Pen. Code, § 496d; all undesignated statutory references are to the Penal Code), sentenced to six years in prison, and ordered to pay fines and fees totaling $440. He makes two contentions on appeal. First, Martinez contends that, under Proposition 47, his conviction for receiving a stolen vehicle must be reduced to a misdemeanor. That contention has been foreclosed by our Supreme Court's decision in *People v. Orozco* (2020) 9 Cal.5th 111 (*Orozco*), which was decided after briefing concluded in this case. Second, Martinez contends that, under *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), his due process rights were violated when the trial court ordered him to pay the $440 without finding an ability to pay. This contention fails because, as we held in *People v. Jones* (2019) 36 Cal.App.5th 1028 (*Jones*) on similar amounts imposed along with a similar prison term, any purported *Dueñas* error is harmless. We therefore affirm, as discussed below.

The details of the offense do not matter to this appeal. In June 2018, a mechanic arrived at work and noticed that the usually locked door was open and a vehicle was missing from one of the bays. Papers containing Martinez's name were found near a broken skylight above the garage, and Martinez was arrested some days later. A jury found Martinez guilty of both taking a vehicle without the owner's consent and receipt of a stolen vehicle, and the jury found true a special allegation that the vehicle was worth more than $950. The trial court sentenced Martinez to a total of six years in prison with

264 days' credit for presentence custody and conduct. The trial court also imposed a $300 restitution fine under section 1202.4, subdivision (b), an $80 court operations assessment fee under section 1465.8, and a $60 conviction assessment fee under Government Code section 70373.

Martinez seeks to reverse the jury's factual finding that the vehicle was worth more than $950, which he claims would reduce the count under section 496d to a misdemeanor. His argument is that the mechanic's opinion about the vehicle's value should not have been admitted at trial, so the finding as to the vehicle's value was without support. Even if we assume that the mechanic's testimony was wrongfully admitted, however, his conviction would not be reduced to a misdemeanor here.

Martinez's argument would be viable only if Proposition 47 were to apply to a section 496d conviction. Proposition 47 amended a different section of the Penal Code (§496, subd. (a)) to provide that theft of property not exceeding $950 in value "shall be a misdemeanor." In *Orozco*, our Supreme Court considered and rejected the claim that Proposition 47 extended to section 496d. (See *Orozco*, *supra*, 9 Cal.5th at p. 123 ["We hold that Proposition 47's amendment to section 496[,subd.] (a) did not affect convictions for receiving stolen property under section 496d."].) *Orozco* was decided after briefing concluded in this appeal, but it is nevertheless determinative.

Martinez's second contention, alleging *Dueñas* error, also fails; any error was harmless. In *Jones*, *supra*, 365 Cal.App.5th 1028 the defendant was sentenced to a six-year prison term (with 332 days' credit for presentence custody and conduct) and ordered

to pay $370 in contested fines and fees. (*Jones*,. at p. 1035.) Because at a minimum wage of $12 a month, the defendant would have "earned $720 after five years, $300 of which will be deducted to pay for the restitution fine, leaving $420 to pay the remaining $70," we held that any *Dueñas* error was harmless. (*Jones*, at p. 1035.) Here, the facts are slightly different in that Martinez's sentence is longer by two months (after taking credits into account) and has been ordered to pay $440, not $370, but the analysis is the same. After five years, Martinez will have earned $720, $300 of which will be deducted to pay for the restitution fine, leaving $420 to pay the remaining $140. Thus, any purported *Dueñas* error is harmless.

We note that even though Martinez's conviction was the result of a jury trial and he was sentenced to two concurrent six-year prison terms, his abstract of judgment erroneously states that the counts were the result of a plea agreement and that the terms are not concurrent. "Courts may correct clerical errors at any time," and "[i]t is, of course, important that courts correct errors and omissions in abstracts of judgment." (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We order that the abstract of judgment be corrected.

DISPOSITION

The judgment of conviction is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment to reflect conviction by jury trial and the imposition of concurrent sentences and forward it to the Department of Corrections and Rehabilitation.

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RAPHAEL
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.